D.B. CIVIL SPECIAL APPEAL(W)NO.1381/2006

Rishabh Sawariwal
Vs.
State of Rajasthan & Ors.

DATE OF ORDER :: 16-05-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri S.K. Saksena, for the appellant.

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition, in effect and substance, seeking direction upon the respondents to allow him to re-appear in one/more subjects at the Senior Secondary Examination, 2006 for improvement of the division/marks, after quashing the resolution of the Board of Secondary Education for Rajasthan dated 6.1.2006. By the said resolution, the Board amending its earlier resolution in the matter of re-appearing at the examination for improvement of division/marks has restricted the number to one attempt and the choice to the succeeding examination. Copy of the earlier resolution on the subject has not been brought to our notice but it is said that there was no such restriction and accordingly it was open to the students to re-appear in the examination for improvement of division/marks irrespective of the passage of time even after the candidate had passed higher

examinations. According to the appellant, the said amendment takes away his vested right to re-appear at the Senior Secondary Examination for improvement of division and marks.

Facts of the case are that the appellant passed the Secondary Examination in 1996, the Senior Secondary Examination in 1998, Bachelor of Arts Examination in 2002 and Master of Arts(Previous) Examination in 2005. Senior Secondary is the basic qualification for the post of Teacher, Lower Division Clerk etc. The appellant wants to improve his division/marks and he accordingly sought permission to appear at the examination to be held in 2006. According to the appellant, he is qualified to appear at the said examination but by reason of the amended resolution dated 6.1.2006 he is prevented from appearing at the examination. In support of the appellant's case, reliance is placed on Surendra Kumar and Ors. Vs. State of Rajasthan & Anr., 2002(2)RLW 1013.

We do not find any substance in the contention that the amendment takes away any vested right of the appellant. It was open to the appellant to re-appear at any of the examinations between 1998 and 2006 for improving his division/marks but he did not do so. By the impugned resolution, the Board has merely regulated the system of re-appearing at examination for improvement of marks etc. Such regulations are made in academic interests and falls within the realm of policy matter. This Court would not like to interfere with the same. The

decision in Surendra Kumar Vs. State of Rajasthan was rendered in an entirely different context. The dispute related to appointment on the post of Teacher and the point for consideration was whether the petitioner was entitled to consideration of his case on the basis of marks secured at the subsequent examination. In that context it was held that the higher marks secured by the candidate reflects his merit and if he had secured better marks at the subsequent examination in the fitness of things his case should be considered on that basis. The issue raised in this appeal is totally different and the decision lends no help to the appellant.

We find no merit in this appeal which is accordingly dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen